

11/10  
KARIN J. IMMERGUT  
United States Attorney  
District of Oregon  
**NEIL J. EVANS, OSB #96551**  
Assistant United States Attorney  
1000 S.W. Third Avenue, Suite 600  
Portland, OR 97204-2904  
Tel.: (503) 727-1053  
Fax: (503) 727-1117  
neil.evans@usdoj.gov

FILED '07 DEC 11 13:42 USDC-ORP

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

FREEWAY LAND COMPANY, LLC.

Defendant.

**CV '07 - 1819 JO**

Civil Action No. \_\_\_\_\_

**COMPLAINT**

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the U.S. Army Corps of Engineers (Corps), alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action commenced under section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), to obtain injunctive relief and civil penalties against Freeway Land Company, LLC, an Oregon limited liability corporation ("Defendant"), for the

discharge of pollutants into waters of the United States in the City of Portland, Multnomah County, Oregon without authorization by the United States Department of the Army, in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

2. In this action, the United States seeks (1) to enjoin the discharge of pollutants into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendant, at its own expense and at the direction of the Corps, to restore and/or mitigate the damages caused by its unlawful activities; and (3) to require Defendant to pay civil penalties as provided in 33 U.S.C. § 1319(d).

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the District of Oregon pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because the subject property is located in this District, and the cause of action alleged herein arose in this District.

5. Notice of the commencement of this action has been provided to the State of Oregon pursuant to CWA section 309(b), 33 U.S.C. § 1319(b).

### **THE PARTIES**

6. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

7. Defendant is a limited liability corporation organized under the laws of Oregon with a business address of Eucon Corporation, Attn: A. Neil DeAtley, 4418 East 8th Avenue Spokane Valley, Washington 99212.

8. At all times relevant to the Complaint, the Defendant either owned, leased or otherwise controlled the real property that is the subject of this Complaint and/or otherwise controlled the activities that occurred on such property.

### **STATUTORY BACKGROUND**

9. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit issued pursuant to CWA section 404, 33 U.S.C. § 1344.

10. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

11. CWA section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

12. CWA section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, dredged spoil, rock, sand and cellar dirt.

13. CWA section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

14. 33 C.F.R. § 328.3(a)(1), (2), (3), (5) and (7), and 40 C.F.R. § 232.2, define "waters of the United States" to include: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) all other waters, such as intrastate lakes, rivers, streams, sloughs or wetlands, the use, degradation or destruction of which could affect interstate or foreign commerce; (iv) tributaries to such waters; and (v) wetlands adjacent to such waters or its tributaries.

15. 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 232.2 define "wetlands" as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

16. CWA section 502(14), 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

17. CWA section 502(5), 33 U.S.C. § 1362(5), defines "person" to include "an individual [or] corporation."

18. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

19.. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

## **GENERAL ALLEGATIONS**

20. From 1993 through 2003 the Defendant and/or persons acting on its behalf, discharged dredged or fill material into waters of the United States without a permit under CWA section 404 at 6400 S.E. 101st Avenue in Multnomah County, Oregon (hereinafter referred to as the "Site")

21. The dredged or fill material that the Defendant and/or persons acting on its behalf, caused to be discharged includes, among other things, dirt, spoil, rock and sand, all of which constitute "pollutants" as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

22. The Defendant and/or persons acting on its behalf used mechanized land-clearing and earth-moving equipment to accomplish the discharges. This equipment constitutes "point sources" as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

23. Defendant did not obtain a permit from the Secretary of the Army, acting through the Chief of Engineers, for the discharges of dredged or fill material into waters of the United States as required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344.

24. The Defendant either owned, leased or otherwise controlled the land on which each unauthorized discharge of dredged or fill material into waters of the United States occurred.

25. The Defendant conducted, contracted for, supervised and/or otherwise controlled the unauthorized activities at issue in Paragraph 20.

26. The Defendant is a person within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

27. Defendant has violated and continue to violate CWA section 301(a), 33 U.S.C. § 1311(a), by its unauthorized discharges of dredged or fill material into waters of the United States, including wetlands, at the Site.

28. Each day that such material remains in place constitutes a separate violation of CWA section 301(a), 33 U.S.C. § 1311(a).

29. Unless enjoined, Defendant are likely to continue to discharge dredged or fill material into and/or to allow dredged or fill material to remain in the Site in violation of CWA section 301, 33 U.S.C. § 1311.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

That the Defendant be permanently enjoined from discharging or causing the discharge of dredged or fill material or other pollutants into any waters of the United States except in compliance with the CWA;

That the Defendant be enjoined to undertake measures, at Defendant's own expense and at the direction of the Corps, to effect complete restoration of the Site and/or to conduct on- and/or off-site mitigation for irreversible environmental damage, as appropriate;

That the Defendant be assessed pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of each violation of CWA section 301(a), 33 U.S.C. § 1311(a);

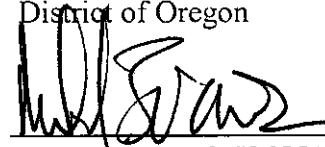
That the United States be awarded costs and disbursements in this action; and

That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

DATED this 11<sup>th</sup> day of December 2007.

Respectfully submitted,

Karen Immergut  
UNITED STATES ATTORNEY  
District of Oregon

A handwritten signature in black ink, appearing to read "NEIL J. EVANS", is written over a horizontal line.

NEIL J. EVANS #96551  
Assistant United States Attorney  
(503) 727-1053

OF COUNSEL:

Ed Berger, General Attorney  
United States Army Corps of Engineers  
Portland District  
P.O. Box 2946  
Portland, Oregon 97208-2946